

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	File No.: EB-11-OR-0015
John Hays)	
)	NAL/Acct. No.: 201132620002
Bourg, LA)	
)	FRN: 0020918033
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: June 7, 2011**Released:** June 7, 2011

By the District Director, New Orleans Office, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that John Hays (“Mr. Hays”) apparently willfully violated section 301 of the Communications Act of 1934, as amended (“Act”),¹ and sections 95.410 and 95.411 of the Commission’s rules (“Rules”),² by operating a radio transmitter without the requisite Commission authorization. We conclude that Mr. Hays is apparently liable for a forfeiture in the amount of fifteen thousand dollars (\$15,000).

II. BACKGROUND

2. On November 29, 2007, in response to a complaint of interference, the Enforcement Bureau’s New Orleans Office (“New Orleans Office”) warned Mr. Hays in writing of the penalties associated with operating his citizen band (“CB”) radio with excessive power.³ On December 3, 2007, Mr. Hays responded to the New Orleans Office by telephone, admitted to overpower operation, and was again warned orally to cease any operation of his CB station that violated the Rules.

3. On June 3, 2010, in response to another complaint of interference, agents from the New Orleans Office used direction finding techniques to locate the source of the interference to a signal on CB channel 20 (27.205 MHz) emanating from Mr. Hays’s residence. The same day, the agents inspected the CB station and observed a linear amplifier attached to Mr. Hays’ CB transmitter. The agents, using a wattmeter, measured the output power of the CB station with the in-line linear amplifier at 750 watts. The agents then orally warned Mr. Hays that the use of linear amplifiers or any device that results in power levels greater than the authorized limit of 4 watts is prohibited and voids the authority to operate the CB station. Mr. Hays admitted to the agents that he operated his CB station overpower, and, at the conclusion of the inspection, Mr. Hays voluntarily destroyed his linear amplifier.

¹ 47 U.S.C. § 301.

² 47 C.F.R. §§ 95.410, 95.411.

³ See Letter from New Orleans Office to John Hays, dated November 29, 2007.

4. On February 10, 2011, in response to another complaint of interference, agents from the New Orleans Office used direction-finding techniques to again identify a signal on CB channel 20 (27.205 MHz) emanating from Mr. Hays's residence. The same day, the agents inspected the CB station and observed a linear amplifier attached to Mr. Hays's CB transmitter. The agents, using a wattmeter, measured the output power of the CB station with the in-line linear amplifier at 75 watts.⁴ Mr. Hays again admitted to the agents that he was operating his CB overpower.

III. DISCUSSION

5. Section 503(b) of the Act⁵ provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. Section 312(f)(1) of the Act defines willful as the "conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.⁶ The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both section 312 and 503(b) of the Act⁷ and the Commission has so interpreted the term in the section 503(b) context.⁸

6. Section 301 of the Act states that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States except under and in accordance with the Act and with a license.⁹ Section 95.404 of the Rules states that CB operators do not require an individual license because they are authorized by this rule to operate a CB station, provided, however, that they operate the station in accordance with the rules in Subpart D of Part 95 of the Rules ("CB Rules").¹⁰ Operation of CB stations in a manner that is inconsistent with the CB Rules requires a license pursuant to section 301 of the Act. Section 95.411(a) of the Rules states that CB operators may not attach external radio frequency (RF) power amplifiers (sometimes called linears or linear amplifiers) to certificated CB transmitters in any way.¹¹ Section 95.411(b) of the Rules states that

⁴ The agents also monitored Mr. Hays's CB transmissions and heard him transmit one-way communications and the word "faggot." We remind Mr. Hays that CB operations must be consistent with section 95.413 of the Rules, which provides that CB operators not transmit "one-way communications" or "obscene, indecent or profane words, language or meaning." 47 C.F.R. § 95.413. Violations of this rule could subject the operator to further enforcement action.

⁵ 47 U.S.C. § 503(b).

⁶ 47 U.S.C. § 312(f)(1).

⁷ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982) ("This provision [inserted in section 312] defines the terms 'willful' and 'repeated' for purposes of section 312, and for any other relevant section of the act (e.g., section 503).... As defined ... 'willful' means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. 'Repeated' means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be 'continuous' would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in sections 312 and 503, and are consistent with the Commission's application of those terms ...").

⁸ See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) ("*Southern California Broadcasting Co.*").

⁹ 47 U.S.C. § 301.

¹⁰ 47 C.F.R. § 95.404.

¹¹ 47 C.F.R. § 95.411(a).

there are no exceptions to this rule and that use of a power amplifier voids the authority to operate the station.¹² During inspections of Mr. Hays's CB station on June 3, 2010, and February 10, 2011, agents from the New Orleans Office observed that Mr. Hays had attached a linear amplifier to his CB transmitter. Section 95.410(a) of the Rules states that CB station transmitter output power must not exceed 4 watts carrier power.¹³ Section 95.410(c) of the Rules states that use of a transmitter output power in excess of that authorized voids the authority to operate the station.¹⁴ On June 3, 2010 and February 10, 2011, agents from the New Orleans Office determined that Mr. Hays operated a CB station from his residence, and, on both days, the measured output power of Mr. Hays's CB transmitter and attached amplifier exceeded authorized power levels.¹⁵ Because Mr. Hays attached a linear amplifier to his CB transmitter and operated with more than authorized power, he no longer had the authority to operate the CB station without a license. Because he consciously operated his CB station with an amplifier, we find that the apparent violations were willful. Therefore, based on the evidence before us, we find that Mr. Hays apparently willfully violated section 301 of the Act and sections 95.410 and 95.411 of the Rules by operating an unlicensed radio transmitter.

7. Pursuant to the Commission's *Forfeiture Policy Statement* and section 1.80 of the Rules, the base forfeiture amount for operating without an instrument of authorization is \$10,000.¹⁶ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.¹⁷ Mr. Hays, by his own admission, operated overpower with a linear amplifier on at least two different occasions. The fact that Mr. Hays continued to operate overpower and with a linear amplifier despite being warned both orally and in writing that such actions violated the Act and Rules demonstrates a deliberate disregard for the Commission's requirements. Thus, we find that an upward adjustment in the forfeiture amount of \$5,000 is warranted.¹⁸ Applying the *Forfeiture Policy Statement*, section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Mr. Hays is apparently liable for a forfeiture in the amount of \$15,000.

¹² 47 C.F.R. § 95.411(b). Use of the amplifier will be presumed if the RF amplifier is located on your premises and if there is other evidence that you have operated your CB station overpower. 47 C.F.R. § 95.411(c).

¹³ 47 C.F.R. § 95.410(a).

¹⁴ 47 C.F.R. § 95.410(c).

¹⁵ On June 3, 2010 and February 10, 2011, Mr. Hays' CB transmitter and amplifier were measured at 750 watts and 75 watts, respectively. See paras. 3-4 *supra*.

¹⁶ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*"); 47 C.F.R. § 1.80.

¹⁷ 47 U.S.C. § 503(b)(2)(E).

¹⁸ See *Robert Brown*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 13740 (Enf. Bur. 2010 (upwardly adjusted by \$5,000 because violator operated an unlicensed radio station after notice that such action violated the Rules)); *Nounoune Lubin*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 12654 (Enf. Bur. 2010) (upwardly adjusted by \$10,000 because violator operated an unlicensed radio station on multiple days after notice that such action violated the rules).

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Act, and sections 0.111, 0.204, 0.311, 0.314 and 1.80 of the Rules, John Hays is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of fifteen thousand dollars (\$15,000) for violations of section 301 of the Act and sections 95.410 and 95.411 of the Rules.¹⁹

9. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Rules within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, John Hays **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

10. Payment of the forfeiture must be made by credit card, check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Account Number and FRN referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.²⁰ If you have questions about payment procedures, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov. Mr. Hays shall send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

11. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.80(f)(3) and 1.16 of the Rules. The written statement must be mailed to Federal Communications Commission, Enforcement Bureau, South Central Region, New Orleans Office, 2424 Edenborn Ave. Suite 460, Metairie, LA 70001 and must include the NAL/Acct. No. referenced in the caption. Mr. Hays also shall email the written response to SCR-Response@fcc.gov.

12. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

¹⁹ 47 U.S.C. §§ 301, 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 95.410, 95.411.

²⁰ See 47 C.F.R. § 1.1914.

13. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by both Certified Mail, Return Receipt Requested, and regular mail, to John Hays at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Walter Gernon
District Director
New Orleans
South Central Region
Enforcement Bureau